

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ALASKA

3 JOHN GILBERT,

4 Plaintiff,

5 vs.

6 APC NATCHIQ, INC.

7 Defendants.

Case No. 3:03-CV-00174-RRB

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9 DEPOSITION OF DOUGLAS L. SMITH
 June 1, 2006

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11 APPEARANCES:

12 FOR THE PLAINTIFF:

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16
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18
19 ALSO PRESENT:

MR. JOHN GILBERT

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<p>for their performance at their embedded location than transferred to supervisor.</p> <p>Q Okay. So if the specialist was having a product -- or a work product problem, you'd go talk to the specialist and not Mr. Gilbert and say -- is that fair?</p> <p>A No, John or I both may talk to that person. The supervisor or the manager may speak to that person on performance, but as I read -- understand, this is to be more of an accountability perspective, that the supervisor would be accountable for the performance of his employees working under him.</p> <p>Q Okay. And it's -- am I correct in understanding that you never did an analysis of any other positions besides Fort Greeley for APC or otherwise that entailed this -- the issue of whether or not an individual would get paid for, quote, all hours worked, unquote?</p> <p>A That's correct.</p> <p>Q Okay. All right. There are numerous people in the safety specialist and supervisor position, and numerous people have gone through those jobs. Do you think as a whole that they would agree or disagree with the proposition that largely the safety supervisor did the same work as the safety specialist?</p>	<p>1 answered the question as to two individuals.</p> <p>2 MS. ZOBEL: Well, two individuals that he</p> <p>3 talked to about whether it was -- whether it was exempt or</p> <p>4 not.</p> <p>5 A Correct.</p> <p>6 MS. ZOBEL: You're....</p> <p>7 MR. COVELL: Well, I'm -- and in analyzing</p> <p>8 whether it's exempt, part of the analysis is whether or</p> <p>9 not....</p> <p>10 MS. ZOBEL: If....</p> <p>11 MR. COVELL:you do the same job or not.</p> <p>12 MS. ZOBEL: If you're asking whether these two</p> <p>13 people believed believe that they did the same job, then he</p> <p>14 has a basis for answering. If you're asking for all the</p> <p>15 people, then he has -- it lacks foundation.</p> <p>16 MR. COVELL: Well, I asked for all the people,</p> <p>17 and he told me he couldn't answer as to most of them, but as</p> <p>18 to two he could.</p> <p>19 MS. ZOBEL: Okay. So is this question....</p> <p>20 MR. COVELL: And he was proceeding....</p> <p>21 MS. ZOBEL:as to two or is this as to</p> <p>22 all?</p> <p>23 MR. COVELL: I -- and this question is in</p> <p>24 clarification of the last question or two.</p> <p>25 MS. ZOBEL: All right.</p>
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<p>1 A I can't draw that conclusion on the whole. I can only</p> <p>2 speak to discussions with one or two employees about</p> <p>3 their perception of the position.</p> <p>4 Q Okay. And why don't you tell me about those one or</p> <p>5 two -- name the employees and tell me about the</p> <p>6 discussions?</p> <p>7 A I spoke with Robert Carrier and Tom Mannix who were</p> <p>8 both specialists at the time, and continue to be</p> <p>9 specialists at Kuparuk, and asked them what their</p> <p>10 perception was of the supervisor position in meeting</p> <p>11 the activities that I felt made it exempt, and then</p> <p>12 their -- and their response to me was that they did</p> <p>13 see that position as a position of authority with</p> <p>14 administrative responsibilities, and it seemed to meet</p> <p>15 the intent of what I presumed their perception would</p> <p>16 be, to make it an exempt position.</p> <p>17 Q Okay. But coming back to the question, would whether</p> <p>18 or not -- coming back to the question, would they</p> <p>19 agree or disagree with the proposition that the safety</p> <p>20 supervisor largely did what a safety specialist did</p> <p>21 and vice versa?</p> <p>22 MS. ZOBEL: You're asking him to tell you what</p> <p>23 other people would think? If so, you're asking for</p> <p>24 speculation.</p> <p>25 MR. COVELL: Well, I think he just partially</p>	<p>1 MR. COVELL: Okay. It's....</p> <p>2 A Okay. In regards to the two people I spoke with....</p> <p>3 Q (By Mr. Covell) Right.</p> <p>4 Atheir perception was that the position did not do</p> <p>5 safety specialist work as a routine function.</p> <p>6 Q Okay. Okay. As far as keeping records of hours that</p> <p>7 Mr. Gilbert may have worked -- oh we don't need to do</p> <p>8 that. Never mind.</p> <p>9 MR. COVELL: Withdraw that.</p> <p>10 Q You didn't -- you did look at those pay records,</p> <p>11 right?</p> <p>12 MS. ZOBEL: No, you've not shown him....</p> <p>13 MR. COVELL: Okay.</p> <p>14 MS. ZOBEL:the pay records.</p> <p>15 MR. COVELL: All right.</p> <p>16 Q (By Mr. Covell) I'd represent to you in discovery we</p> <p>17 have pay records for Mr. Gilbert. Some have indicated</p> <p>18 consistently 10 hours a day and some indicate one day</p> <p>19 worked. Are you aware of any other records that might</p> <p>20 indicate hours worked by Mr. Gilbert different than</p> <p>21 those, or would indicate things different than those?</p> <p>22 A Not at this time, no.</p> <p>23 Q Okay. Mr. Gilbert submitted to the company what might</p> <p>24 be called a daily log which is sort of a day planner</p> <p>25 and has some notes about what he did each day and then</p>

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has a notation of hours, 12, 13, 14 and a half. Do you have any information — assuming he represents that those are the hours he worked those days, do you have any information that would dispute that — whether or not he actually worked those hours?

A No.

Q Okay. And is it true that when he worked as both safety specialist and safety supervisor, that is, the hours he worked varied?

A That is true.

MR. COVELL: Let's go off for just a minutes here.

(Off record)

(On record)

COURT REPORTER: We back on record at 1:20.

Q (By Mr. Covell) Mr. Smith, I've handed you a copy of APC's response of February 17, '06 discovery request, and I'd direct you to the second page there under response. And there's a list of plaintiff's job duties. We talked about the plaintiff's job duties, and I just want to go through these and see if there are consistencies with what we already talked about. I think we already talked about developed, wrote and implemented HSE department procedures. You agree he did that, right?

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the next question I'm going to ask you is what does that mean.

A Yeah. I think that's maybe a repeat of some of the prior statements. So, you know, implemented changes could be those procedural changes due to regulatory changes or policy changes. Changes might also include maybe we have night shift activities that are sporadic and meet coverage, you know, changes implemented, devised, who's going to cover the night shift, and when.

Q All right. Is it right that sort of your day, the hope (ph) of your day was 12 hours and there wasn't a night shift, but oftentimes your department had to cover nighttime duties?

A We would typically only do that with additional personnel or changing of work hours. So if a specialist needed to cover night, he may work noon to midnight and split the shifts, or be transferred to the night shift.

Q All right. But it's not like the police station, there's no midnight shift in....

A That's correct.

Qsafety, right? Okay. All right. Hiring input and veto rights. We already talked about that. I think we covered that ground as to what you thought he

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A I agree.

Q And then supervision and general oversight of the safety specialists to determine work needs and took steps necessary to facilitate department functionality. Do you maintain that's something Mr. Gilbert did as safety supervisor?

A I think that's generally correct.

Q Okay. Briefly, I don't want to go on this a long time, what does facilitate department functionality mean, if you know?

A Yeah, that would be to, for example — one example, receive say a regulatory change or a policy change from Conoco that would require implementation into our practices, so we would interpret, place into department functionality and institute those changes.

Q And that would be sort of part of the first one, too, then, changing the book about it?

A It could be. The department functionality could maybe be better described by shift scheduling, making sure we had coverage at all locations.

Q Okay. And the next one, interpret testing results?

A That's correct.

Q Okay. Devise and implemented changes to department on an on-going basis and as needed. Do you agree with that as a duty? And I'll let you know right now

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could or couldn't do in that regard, right?

A I don't think entirely. I think you asked me if he performed any disciplinary action or had hire and fire authority correct?

Q Right.

A And in -- as I look to that position, when we were making changes to a department, when -- and the organization when through a metamorphosis quite a bit during John's tenure, that that position was -- was consulted with on who was our top performers as we were reducing personnel. You know, who were the keepers and who were the guys who were at the bottom of performance level.

Q Okay. All right. And we talked about -- well, did he ever discipline anybody that you know of?

A Not in my recollection was there any disciplinary action handed out from that position.

Q Okay. All right.

A I'd like to clarify one thing.

Q Sure.

A That in my whole tenure there, I only took one disciplinary action in the whole time, so it wasn't very frequent.

Q Okay. Okay. Approval of timesheets and other employee/management functions. Did the safety

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